



City of Dublin

Land Use and Long

Range Planning

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BOARD OF ZONING APPEALS

MEETING MINUTES

MAY 23, 2013

AGENDA

NEW CASE:

1. **Buckley Residence – Setback and Fence
13-043V**

**7153 Timberview Drive
Non-Use (Area) Variance**

Chair Brett Page called the meeting to order at 6:29 p.m. Other Board members present were James Zitesman, Patrick Todoran, Brian Gunnoe, and Rion Myers. City representatives present were Tammy Noble-Flading, Sharonda Whatley, Rachel Ray, and Flora Rogers.

Motion and Vote

Brett Page moved, and Rion Myers seconded, to accept the documents into the record. The vote was as follows: Mr. Zitesman, yes; Mr. Gunnoe, yes; Mr. Myers, yes; Mr. Todoran, yes; and Mr. Page, yes. (Approved 5 – 0.)

Mr. Zitesman confirmed that there were no amendments or corrections to the April 25, 2013 meeting minutes, and requested a motion.

Motion and Vote

James Zitesman moved, and Patrick Todoran seconded, to approve the April 25, 2013 meeting minutes as presented. The vote was as follows: Mr. Myers, yes; Mr. Gunnoe, yes; Mr. Page, yes; Mr. Todoran, yes; and Mr. Zitesman, yes. (Approved 5 – 0.)

Administrative Business & Communications

Ms. Noble-Flading announced that the most recent updates to the City of Dublin Community Plan were adopted by Planning and Zoning Commission and will be forwarded to City Council in July 2013 for final approval. She congratulated Justin Goodwin for his work on this project. Ms. Noble-Flading also wanted to update the Board of Zoning Appeals on an issue that was brought up by City Council regarding fence variances in residential zoning districts. She stated that the Board of Zoning Appeals has reviewed several applications regarding this issue and subsequently, City Council addressed the topic at the May 20, 2013 City Council Meeting. She stated that Council discussed whether or not a code modification should be drafted to allow less restrictive setback requirements for fences. She stated that Council concluded that the current regulations was intended to encourage limited areas for privacy, yet create visual corridors that are not obstructed by structures of fences along residential neighborhoods. She stated that council members concluded that a code modification is not appropriate at this time. Ms. Noble-Flading stated that she would continue to update the Board of Zoning Appeals on any further discussions regarding this topic by City Council.

Mr. Page asked that anyone who wanted to address the Board on the case this evening please stand and be sworn in. He administered the oath to the applicant, audience and staff. He introduced the case.

Mr. Zitesman stated that he conducted a site visit to 7153 Timberview Drive and had an opportunity to meet the property owners. He stated that their conversation did not constitute ex-parte communication and any comments related to the case were asked to be addressed at the public meeting.

Mr. Page thanked Mr. Zitesman for making them aware of the discussion.

Ms. Noble-Flading stated that if any information about the facts of the case were discussed at the site visit, the information would need to be disclosed to the other members. She stated that based on Mr. Zitesman's description of the conversation, this was not part of the discussion.

Mr. Zitesman agreed.

**1. Buckley Residence – Setback and Fence
13-043V**

**7153 Timberview Drive
Non-Use (Area) Variance**

Mr. Page announced the case number and the presenter as Sharonda Whatley.

Ms. Whatley stated the current application is case number 13-043V and is non-use area variance application that requests to install a fence into the required side and rear yard setbacks. She described the location of the property and the general features of the site. She stated that the applicant is requesting a variance from the six-foot minimum side yard setback, as well as a variance from the 25-foot minimum rear yard setback. Ms. Whatley stated that the applicant is proposing five-foot setbacks along both the side and rear of the property. She stated that Planning has reviewed the application based on the non-use area variance review criteria and determined that the request does not meet the standards. She stated that Planning is recommending disapproval of the request and that she is available to answer any questions.

Mr. Page thanked Ms. Whatley. He then asked if there any questions from the Board (no questions).

John Buckley (7153 Timberview Drive, Dublin) thanked the Board for allowing this forum. He stated that he and his family just recently moved to Dublin from Texas and have three small children, ages four, two and one. He stated that he understood that communities have restrictions but for their family, the basis of the request is for the safety of his children. He stated that their family lives on a corner lot that is adjacent to an extremely busy street. He stated that recently there was a potential issue with their daughter and a passing motorist. Mr. Buckley stated that the variance request was based on these safety issues and rather than go through each criteria, he is available for any question of the Board.

Mr. Page stated asked Mr. Buckley if there were conditions of the site that he felt were important to the criteria.

Mr. Buckley stated that the fact that the house is situated further back than the other houses along his road was a special condition. He stated that if he were to build a fence that is located twenty-five feet from the rear property line, the fenced in area would be miniscule. He then stated that many of his neighbors have fences along the perimeter of the yard.

Mr. Zitesman asked how much further back is the applicant's house situated compared to the other neighbors.

Mr. Buckley stated the distance is approximately ten feet.

Ms. Noble-Flading said that the site does have two front setbacks, however building is located on front setbacks of both Forest Run Drive and Timberview Drive. She explained that the house could not be located any closer to the roads, based on the required setbacks and so the rear yard is only minimized by the size of house. She stated that comparative to other lots in the City of Dublin, the rear yard is quite large.

Mr. Page asked if there were any questions for the applicant.

Mr. Page asked Planning if the analysis included the consideration that the house was on a corner lot. He stated that in his opinion, consideration should be given to corner lots with deeper houses. He stated that he felt the depth of the house puts the applicant at a disadvantage and that they applicant did not build the house.

Ms. Noble-Flading stated that staff did analysis the fact that the house is located on a corner lot, as part of our analysis. She stated that corner lots are not uncommon in suburban communities and that there are several corner lots with close proximity to the applicant's site. She stated that the difficulty that we have is that we can't treat the applicant differently, because the footprint of their house is bigger. She stated that the other neighbors have the right to increase the footprint of their homes by building additions. She stated that the second issue is that the issue of a corner lot and a wider footprint for a residential house may have more weight to our analysis if it severely limited the fenced in area. She stated that we have reviewed applications where if the zoning regulations were met by a property owner and their rear yards are less than ten feet in depth. She stated that in this particular case, the applicant has a sizable area that could be fenced in.

Mr. Page asked if we had a visual representation of where the fence could be placed on the property.

Ms. Whatley provided the image for the Board.

Mr. Zitesman asked what size of the rear yard is, within the permitted fenced in area (staff paused to calculate area).

Mr. Myers asked the applicant if he considered other possibilities such as shrubbery along the rear property line.

Mr. Buckley responded that they have and are still exploring the possibility.

Mr. Buckley stated that the fence is only a temporary condition until their children have grown. He said that the fence could be removed within two to three years.

Ms. Noble-Flading stated that the rear area is approximately 32 feet deep by 64 feet in length and is approximately 2,000 square feet.

Mr. Buckley indicated that they have a swing set on the property now that would be outside the fenced in area. He stated that it would look awkward if it was located outside the fenced area.

Mr. Page asked what the horizontal width is between each of the split rails.

Mr. Buckley stated they were 10 feet.

Mr. Page asked if that would be adequate to safety secure children

Mr. Buckley stated that the rails would include wire mesh to prevent access between the rails.

Ms. Noble-Flading stated that Planning had received correspondence from a property owner, Mr. Holiday, that is located southeast of the applicant's property. He expressed concerns of the visibility of the fence along Forest Run Drive.

Mr. Myers responded he didn't think visibility would be a concern with this type of fence.

Mr. Page asked if anyone from the public would like to address the case.

Sylvia Shadd (5168 Forest Run Drive, Dublin Ohio) and my comments are related to the Homeowners Association and if they did not approve this fence, can the recommendation of the Board of Zoning Appeals override the HOA's decision.

Ms. Noble-Flading stated that the processes are two separate processes and both are enforceable. The HOA can enforce their decisions through the deed restrictions and the City of Dublin can enforce their decisions through code enforcement actions.

Ms. Shadd clarified that you have to satisfy both restrictions.

Ms. Noble-Flading said yes.

Mr. Page asked if the applicant would like to come back up and address the Board.

Mr. Buckley stated that the process has been very confusing. He stated that the Board has been disorganized within our HOA. He stated that he and his wife went to them and requested a vote on the matter. He stated that more than half the neighborhood did not respond. He stated that he and his wife went back to the HOA and asked what the next steps would be. He stated that the Board reconvened and said they would solicit votes from the neighborhood. He said in the meantime they suggested he pursue the variance process with the City of Dublin.

Mr. Page asked if there were more comments from the public.

Ms. Christine Wilson (5151 Forest Run Drive, Dublin). Ms. Wilson stated that she lives at the end of the road adjacent to this property. She stated that there is a lot of traffic that runs through the area. She stated that there are approximately 46 homes on Forest Run Drive and approximately 28 homes on Timberview Drive. She stated all of the neighbors are aware of the children in the neighborhood and the associated safety issues. She stated that that is everyone's primary concern is the safety of children but ideally this issue is best addressed through supervision of children, opposed to fences. She stated that even if safety issues are addressed with this property by the use of a fence, there would not be the same provisions for the other 77 homes that have dealt with the same issue.

Mr. Page said they appreciated her comments. He asked if there was any other public comment (no comments). He asked for discussion amongst the Board.

Mr. Zitesman stated that all the members are sympathetic to the concerns of the parents. He stated that the issue is for the Board to uphold the Code and only provide variances in the circumstances where the standards are met. He stated that he does not believe the standards have been met.

Mr. Page stated that he agrees with Mr. Myers that there may be other options available. He also stated that he agreed with comments made by the public that this does not offer solutions to the rest of the neighborhood.

Mr. Page made a motion, seconded by Patrick Todoran, to disapprove a variance from Section 153.080(B)(2) to allow a fence to be located within the required side and rear yard setback finding that the variance does not meet all of the required non-use (area) variance standards.

The vote was as follows: Mr. Gunnoe, yes; Mr. Myers, yes; Mr. Zitesman, yes; Mr. Todoran, yes; and Mr. Page, yes. (Disapprove 5 – 0.)

Mr. Page adjourned the meeting at 7:06 p.m.

As approved on July 25, 2013 Board of Zoning Appeals.

